

# **Caltrans Section 106 Programmatic Agreement Summary of Proposed Edits as of February 16, 2023**

## **PA MAIN BODY**

### **TITLE**

- Edited to reflect that this will be the Second Amended PA
- Added ACOE as one of the PA parties.

### **UNIVERSAL EDITS**

- Changed “Attachment” to “Appendix”
- Removed specific references to the Standard Environmental Reference (SER)
- “Assumption” [in re: eligibility] changed to “consideration.”

### **WHEREAS CLAUSES**

- Whereas added to reflect that ACOE designates Caltrans lead for 408 permits.
- Whereas edited to reflect that the Second Amended PA will supersede the First Amended PA.

### **STIPULATIONS**

(Edits to the PA stipulations, other than the universal edits mentioned above)

#### **Stipulation I, Applicability**

- Stipulation I.B updated language to allow for use of PA on tribal lands with written approval from tribes.
- Stipulation I.D edited to reflect that Indian Tribes may issue permits or otherwise provide assistance with an undertaking.
- Stipulation I.F edited to reflect that ACOE designates Caltrans lead for 408 permits and that Caltrans will provide documentation (rather than summary notification) to the Corps.

#### **Stipulation II, Definitions**

- Edited to only include definitions that are in the PA but not 36 CFR 800.16.
- Revised definition of Emergency to reflect 36 CFR 800.12.
- Added definition for No Potential To Cause Effect.

#### **Stipulation IV, Consultation with Indian Tribes**

- Added reference to new Appendix 8

#### **Stipulation V, Public involvement**

- Added provision that if public meetings conducted for NEPA are to be used for 106 consultation, this must be clearly advertised.

#### **Stipulation VI, Delegation to Caltrans**

- Stipulation VI.B.6 added reference to 36 CFR 800.3(f), definition of consulting parties.

#### **Stipulation VIII, Identification and Evaluation of Historic Properties**

- Stipulation VIII.C.3 changed “site” to “property.”
- Stipulation VIII.C.4 added provision that Caltrans will consult with tribes that may attach religious or cultural significance to historic properties being considered eligible.

#### **Stipulation IX, Findings of Effect**

- Changed “Findings” to “Finding” in title of this stipulation.

#### **Stipulation X, Assessment of Effect**

- Stipulation X.B.1 edited to include a new standard condition for vegetation removal projects. (The new stipulation is X.B.1.b; therefore the original Stipulation X.B.1.b would become X.B.1.c and the original Stipulation X.B.1.c would become Stipulation X.B.1.d).
- Stipulation X.B.1.b minor edits to add language from Attachment 5 to clarify that this stipulation only applies when work is limited to rehab, maintenance, repair, alteration etc. *to the historic property*.
- Stipulation X.B.3- propose language clarifying what triggers public objection notification.

#### **Stipulation XIV, Curation**

- **Stipulation XIV.A, Collections on Federal Land**
  - edited to say “Caltrans” rather than “Caltrans District.”
  - edited to delete text and include reference to 36 CFR Part 79.
  - edited to include provisions in a license or permit, in addition to an agreement document.
  - Added provision that prior to applying for a federal license or permit from a Federal Land Manager for work on an archaeological property that may result in the generation of a new collection, Caltrans will consult with tribes as appropriate and communication the results to the Federal Land Manager.
  - Added provision regarding CSO notification for curation agreements or any other agreement regarding final disposition of a collection.
- **Stipulation XIV.B, Collections on Non-Federal Land**
  - Added provision that prior to conducting work that may result in the generation of a new collection from an archaeological property on non-federal public or privately-owned land, Caltrans shall consult with the landowner and tribes as appropriate regarding collection protocols and the ultimate disposition of the collection.
  - Other, minor edits regarding collections on non-federal lands.
  - Added provision regarding CSO notification for curation agreements or any other agreement regarding final disposition of a collection.

### **Stipulation XVI, Emergency Situations**

- Added language that CSO, SHPO and FHWA (if applicable) should be notified as soon as feasible.
- Added provision for blanket notifications in cases of large-scale emergencies

### **Stipulation XX**

- Reorganized to have individual stipulations for these Administrative provisions, formerly included under Stipulation XX as XX.A through XX.J
- Stipulation XX becomes “Resolving Objections.”

### **Stipulation XXII, Exclusionary Provision**

- Stipulation XXII.B.1 (formerly XX.C.2.a) minor edit- changed “cultural resources” to “historic properties.”

### **Stipulation XXIX, Effective Date of This Agreement**

- (formerly XX.J) edited to reflect that the new PA will take effect January 1, 2024.

### **SIGNATORY PARTIES**

- Updated to reflect names of current signatories.

## **APPENDICES**

### **Appendix 1, PQS**

- No edits

### **Appendix 2, Screened Undertakings**

- Minor edit to add clarification that “any work” on a Category 5 bridge does not include bridge replacement.
- Addition of screened class to cover installation of single lane roundabouts within the existing roadway.

### **Appendix 3, APE**

- Revised language to guide the development of single APE and removed language referring to different APEs for built environment and archaeological properties.
- Removed language guiding the delineation of boundaries by effect type within overall APE.
- Adds language clarifying that an APE should include the entirety of accessible right of way in the vicinity of an undertaking.

### **Appendix 4, Exempt Properties**

- Added language to specify that for archaeological sites, additional documentary research may be needed to determine whether the property meets the exemption criteria, particularly when looking for a specific association.

- Caltrans believes the existing language for Property Type 7 is adequate to include 1970s and 1980s postwar housing tracts as they become more than 50 years old.

#### **Appendix 5, Standard Conditions**

- Edited to add a standard condition for vegetation management projects.
- Edited to reflect the ACHP language regarding “indirect effects” so that it refers to non-physical effects.
- Mirroring X.B.1, minor edits to clarify that the SOIS as a standard condition applies only when work is limited to rehab, maintenance, repair, alteration etc. *to the historic property*.

#### **Appendix 6, Data Recovery Plans**

- No edits.

#### **Appendix 7, Seismic Retrofit Program**

- No edits, beyond Stipulation corrections.

#### **Appendix 8, Native American Consultation**

- Brand new appendix detailing policies and procedures for Native American Consultation.